



Maryland Transportation Authority

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September 9, 2008

TO ALL PURCHASERS OF CONTRACT DOCUMENTS:

RE: Contract No. MA-2195-000-002
Miscellaneous Paving Repairs

ADDENDUM NO. 1

Gentlemen:

- A:** The Bid Opening Date for the above referenced contract is still 12:00 noon on **September 19, 2008.**
- B:** Attached are the minutes of the Pre-Bid Meeting held on September 2, 2008 in the FSK Engineering Conference Room at 300 Authority Drive, Baltimore, MD 21222.
- C:** The following changes have been made to the **Invitation for Bids** (please remove any existing pages that have been replaced by this Addendum No. 1 and insert the revised Invitation for Bids pages in their proper sequence):

Page No.:	Description
iii	MODIFIED "TABLE OF CONTENTS"
92A	ADDED Special Provision. "SECTION 500.05 – CONTINGENT MISCELLANEOUS REPAIRS".

D: SCHEDULE OF PRICES

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199	DECREASED quantity for Item No. 1015 – "SINGLE LANE CLOSURE" from 300 UD to 100 UD.
200	DECREASED quantity for Item No. 1016 – "DOUBLE LANE CLOSURE" from 200 UD to 100 UD.
200	DECREASED quantity for Item No. 1017 – "SHOULDER CLOSURE" from 200 UD to 50 UD.
203	DECREASED quantity for Item No. 1033 – "PROTECTION VEHICLE" from 730 UD to 200 UD.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Benjamin F. Mondell', written in a cursive style.

Benjamin F. Mondell
Chief, Procurement

BFM/jcw

THIS ADDENDUM MUST BE ATTACHED TO THE OUTSIDE COVER OF THE PROPOSAL FORM. FAILURE TO DO SO MAY RESULT IN REJECTION OF YOUR BID.

THE ATTACHED RECEIPT MUST BE RETURNED TO THIS OFFICE. FAILURE TO RETURN THE RECEIPT MAY RESULT IN REJECTION OF YOUR BID.



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Maryland
Transportation
Authority

SPECIAL PROVISIONS

CONTRACT NO. MA-2195-000-002

500.05 – CONTINGENT MISCELLANEOUS REPAIRS

**CATEGORY 500
PAVING**

SECTION 500.05 — CONTINGENT MISCELLANEOUS REPAIRS

500.05.01 DESCRIPTION

A contingent allowance of \$200,000.00 has been included in the Proposal Form for miscellaneous paving repairs. This item will only be used if necessary and will not be used without approval of the Engineer.

500.05.02 MATERIALS Not applicable.

500.05.03 CONSTRUCTION Not applicable.

500.05.04 MEASUREMENT AND PAYMENT

Payment for materials for pavement repairs, and other additional items as directed by the Engineer will be paid for under the "Contingent Miscellaneous Repairs" item. There is no guarantee that any or all of this item will be used during the term of the Contract.

SCHEDULE OF PRICES

NOTE: This proposal shall be filled in by the bidder, with the prices written in words and numerals. The extension amounts of unit costs shall also be filled in. For complete information concerning these items, see Specifications, Special Provisions and Contract Form.

ITEM NOS.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEM AND PRICE BID (IN WRITTEN WORDS)	UNIT PRICE		AMOUNTS	
			DOLLARS	CTS.	DOLLARS	CTS.
1011	10	OCCURRENCE OF MOBILIZATION - PAVEMENT REMOVAL EQUIPMENT LOCATION C AT _____ PER OCCURRENCE				
1012	10	OCCURRENCE OF MOBILIZATION - PAVEMENT REMOVAL EQUIPMENT LOCATION D AT _____ PER OCCURRENCE				
1013	5	OCCURRENCE OF MOBILIZATION - PAVEMENT REMOVAL EQUIPMENT LOCATION E AT _____ PER OCCURRENCE				
1014	5	OCCURRENCE OF MOBILIZATION - PAVEMENT REMOVAL EQUIPMENT LOCATION F AT _____ PER OCCURRENCE				
1015	100	UNIT DAYS OF SINGLE LANE CLOSURE AT _____ PER UNIT DAY				
CONTRACT NO. MA-2195-000-002			ADDENDUM NO. 1 - SEPTEMBER 9, 2008			

SCHEDULE OF PRICES

NOTE: This proposal shall be filled in by the bidder, with the prices written in words and numerals. The extension amounts of unit costs shall also be filled in. For complete information concerning these items, see Specifications, Special Provisions and Contract Form.

ITEM NOS.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEM AND PRICE BID (IN WRITTEN WORDS)	UNIT PRICE		AMOUNTS	
			DOLLARS	CTS.	DOLLARS	CTS.
1016	100	UNIT DAYS OF DOUBLE LANE CLOSURE AT _____ PER UNIT DAY				
1017	50	UNIT DAYS OF SHOULDER CLOSURE AT _____ PER UNIT DAY				
1018	50	UNIT DAYS OF ENTRANCE RAMP TREATMENT AT _____ PER UNIT DAY				
1019	50	UNIT DAYS OF EXIT RAMP TREATMENT AT _____ PER UNIT DAY				
1020	6,000	LINEAR FEET OF 6 INCH YELLOW NONTOXIC LEAD FREE WATERBORNE PAVEMENT MARKING PAINT AT _____ PER LINEAR FOOT				

CONTRACT NO. MA-2195-000-002

ADDENDUM NO. 1 - SEPTEMBER 9, 2008

SCHEDULE OF PRICES

NOTE: This proposal shall be filled in by the bidder, with the prices written in words and numerals. The extension amounts of unit costs shall also be filled in. For complete information concerning these items, see Specifications, Special Provisions and Contract Form.

ITEM NOS.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEM AND PRICE BID (IN WRITTEN WORDS)	UNIT PRICE		AMOUNTS	
			DOLLARS	CTS.	DOLLARS	CTS.
1031	60	UNIT DAYS OF FLAGGING OPERATION AT _____ PER UNIT DAY				
1032	250	UNIT DAYS OF PORTABLE VARIABLE MESSAGE SIGN AT _____ PER UNIT DAY				
1033	200	UNIT DAYS OF PROTECTION VEHICLE AT _____ PER UNIT DAY				
		AT _____				
		AT _____				

CONTRACT NO. MA-2195-000-002

ADDENDUM NO. 1 - SEPTEMBER 9, 2008

Pre-Bid Meeting

Contract No. MA-2195-000-002

Miscellaneous Paving Repairs

Anne Arundel County, Baltimore City, Baltimore County, Cecil County,
Charles County, Harford County, Howard County, Queen Anne's County

10:00 a.m., Tuesday, September 2, 2008 - - - FSK Engineering Conference Room

The following people were in attendance:

Scott Felch	Gray & Sons, Inc.	410-771-4311
Peter Placke	Gray & Sons, Inc.	410-771-4311
Robert Snow	Kinsley Construction	410-453-6796
Tom Williams	P. Flanigan & Sons, Inc.	410-467-5900
Keith Klingenberg	Recon Construction Services, Inc.	717-779-0663
Clay Gottlieb	MdTA-Construction	410-537-7885
Jim Wesselhoff	MdTA-Engineering	410-537-7856
Orlando Price	MdTA-MBE	410-537-1055
Linda McGill	MdTA-Procurement	410-537-7814
Ben Mondell	MdTA-Procurement	410-537-7811

Mr. Wesselhoff opened the meeting with the following announcements:

1. The bid due date is 12:00 Noon, September 19, 2008. Bids should be placed in the Bid Box located on the 1st floor of the Engineering Building (300 Authority Drive) and should consist of one completed proposal book.
2. It is not recommended to send bids by overnight delivery service. If that is done however, the bid should be delivered at least one day in advance. It will be the responsibility of the Contractor to make sure that his bid package is placed in the bid box. **The outside envelope of the package must clearly identify the Contract Number and mention that it is a bid package.**
3. Written questions will be accepted by the MdTA until 7 days prior to the bid due date. These questions should be addressed to:

Maryland Transportation Authority
Engineering Division
300 Authority Drive
Baltimore, MD 21222
ATTN: Jim Wesselhoff

Alternatively, questions may be faxed to (410) 537-7801

Response to questions received by MdTA will be distributed to purchasers of bid documents.

4. The minutes will be distributed to all purchasers of bid documents and will be considered as the official record of this meeting.

Mr. Wesselhoff stated that this project provides for the removal by grinding and replacement of bituminous concrete paving at bridge approaches, toll plazas, shoulders, acceleration and deceleration lanes, ramps, parking lots, joint repairs, slab failures, and mainline roadways which are experiencing surface distortion or distresses. The work on this contract is intended to be a two (2) year "on call" contract.

Mr. Wesselhoff stated that Addendum No. 1 will be issued this week to include:

- Special Provision, "Section 500.05 – Contingent Miscellaneous Repairs"
- Minutes of the Pre-Bid Meeting held on September 2, 2008

Ms. Linda McGill, MdTA Procurement, informed the Contractors to review the proposal's "Important Information Regarding MBE Utilization and Bidding Requirements" (Pages 2-4) and the "Notice To Bidders" checklist (Page 5) prior to submitting their bid. Ms. McGill also pointed out that all bids are due by 12:00 Noon on September 19, 2008.

Mr. Orlando Price, MdTA MBE, provided a brief description of the Minority Business Enterprise (MBE) participation program.

An overall MBE subcontract participation goal of 25 percent of the total contract dollar amount has been established for this procurement. This amount includes sub-goals of 12 percent of the total contract dollar amount to be allocated to African American-owned businesses, 7 percent of the total contract dollar amount to be allocated to women-owned businesses, and 6 percent to others. All prime Contractors must achieve all MBE goals through certified MBE subcontractors, regardless of the MBE status of the prime Contractor. The MBE Directory can be found on the Maryland Department of Transportation's website at: http://www.mdot.state.md.us/MBE_Program/Index.html.

The MBE utilization plan, Attachment A, Certified MBE Utilization and Fair Solicitation Affidavit and Attachment B, MBE Participation Schedule must be submitted with each bid, otherwise the bid will be considered non-responsive. IF you are requesting a waiver, you must acknowledge it on Attachment A. Mr. Price distributed handouts detailing the Contract Administration Requirements, Record Retention, Prompt Payment to Subcontractors, Minority Business Enterprise Program Highlights, Minority Disadvantage Business Enterprises, Additional Information for MBE Contractors, MBE Compliance Contractor Notification, and Certified MBE Utilization and Fair Solicitation Affidavit (Effective October 1, 2004). Copies of the handouts are attached herein.

The meeting was then opened to questions and comments concerning the project. The following questions were discussed and responses provided:

Question: How can we meet the overall MBE participation goal of 25%? It seems difficult to achieve, especially finding an MBE that can perform gap-graded paving.

MdTA Response: There was an overall MBE participation goal of 25% with the previous miscellaneous paving repairs contract (MA-860-000-002) and there was gap-graded paving included.

Question: Since this contract includes work from the Maryland/Delaware line to the Bay Bridge to the Nice Bridge, can MdTA quantify how much miscellaneous paving will be required at the Bay and Nice Bridges?

MdTA Response: Since this is a multi-area miscellaneous paving repair contract which will include normal and emergency repair work, the Authority cannot quantify how much paving will be required at the Bay and Nice Bridges.

Question: How do we pay for the excavation as noted in the Additional Paving Needed Detail on page 58?

MdTA Response: On page 86, Section 500.04.04 – Measurement and Payment - Additional Paving Need shows that the excavation will be incidental to the contract unit price per square yard.

Question: In case of an emergency repair, will the Contractor have to be on site within four (4) hours to perform the work as stated in the Special Provisions?

MdTA Response: MdTA will take into account the severity of the repair and will request that the Contractor make a good faith effort to report to the work site within the specified time limit. There is no monetary penalty for failure to comply with this requirement.

As there were no further questions, the meeting was then adjourned.

Approved:  _____

Benjamin F. Mondell
Chief, Procurement

CONTRACT ADMINISTRATION REQUIREMENTS

CONTRACT ADMINISTRATION REQUIREMENTS

Contractor shall:

1. Submit monthly to the Department a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.
5. At the option of the procurement agency, upon completion of the contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

ATTACHMENTS

- A. Certified MBE Utilization and Fair Solicitation Affidavit (must be submitted with bid or offer)
- B. MBE Participation Schedule (must be submitted with bid or offer)
- C. Outreach Efforts Compliance Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- D. Subcontractor Project Participation Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)

RECORD RETENTION

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 06 CONTRACT FORMATION AND AWARD

Chapter 05 Plant Inspection, Audit and Retention of Records

**Authority: State Finance and Procurement Article, §§12-101, 15-108, and 15-109,
Annotated Code of Maryland**

.01 Right to Inspect.

Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law, may inspect at reasonable times the plant, place of business, or jobsite of any bidder or offeror, contractor, prospective subcontractor or assignee, or subcontractor or assignee.

.02 Audits.

A. Audit of Cost or Pricing Data. Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law may audit during the record retention period the books and records of any person who has submitted cost or pricing data to the extent that the books and records relate to the cost or pricing data.

B. Contract Audit. Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that the books and records relate to the performance of the contract or subcontract, or if the agency has reason to believe, from an audit of a cost type contract, that costs have been inappropriately assigned to a cost type contract from a fixed price contract.

.03 Record Retention.

The contractor or subcontractor shall maintain books and records that relate to the cost or pricing data for 3 years from the date of final payment under the contract, unless a longer period is otherwise specified in the contract.

**PROMPT PAYMENT
TO
SUBCONTRACTORS**

A. MARYLAND DEPARTMENT OF TRANSPORTATION POLICY
STATEMENT
PROMPT PAYMENT OF SUBCONTRACTORS

DISADVANTAGED/MINORITY BUSINESS ENTERPRISES

This policy is in accordance with Maryland State Law, codified at Md. Code Ann., State Finance and Procurement Article, §15-226, and 49 CFR, Part 26, 26.29(b)1-3.

It is the policy of the State that a contractor shall promptly pay a subcontractor any undisputed amount that a subcontractor is entitled to under a State procurement contract for construction. This payment shall be made within ten (10) days of receiving a progress payment or final payment from the State. "Undisputed amount" includes the retainage on a contract.

If a contractor withholds payment, the contractor shall:

1. Notify the subcontractor, in writing within the same ten (10) day time period, stating the reasons for payment being withheld,
2. Provide a copy of the notice to the procurement officer.

If a subcontractor does not receive payment within the required time period, the subcontractor may give written notice of non-payment to the procurement officer. The notice shall include:

1. The name of the contractor, the project under which the dispute exists and the amount in dispute,
2. Provide an itemized description on which the amount is based and
3. If known, provide an explanation for any payment dispute.

Within two (2) business days of receipt of written notice from a subcontractor, a MDOT Agency Representative shall verbally contact the contractor to determine if the amount is undisputed.

If the MOOT Agency Representative determines that all or some of the amount is undisputed, the representative shall instruct the contractor to pay the subcontractor the undisputed amount within three (3) business days. The MDOT Agency Representative shall verbally inform the subcontractor the results of discussions with the contractor. If the payment is not made, the subcontractor may report the non-payment to the procurement officer. As a result, the MDOT Agency Representative shall schedule a meeting of the agency project manager, the subcontractor and the contractor, as follows:

1. The time and location shall be selected by the agency representative,
2. The meeting shall be no later than ten (10) days after receiving notice from the subcontractor,
3. The meeting purpose is to establish the reasons for non-payment,
4. The agency representative shall require the parties to provide information necessary to evaluate the dispute,
5. If the agency representative determines the contractor is delinquent, further progress payments to the contractor may be withheld until the subcontractor is paid.

If the payment to the subcontractor is not made within seven (7) days after the agency representative determines that the contractor is delinquent, the agency representative shall schedule a second meeting on the dispute as follows:

1. The time and location shall be selected by the agency representative,
2. The meeting shall be no later than five (5) days after the close of the seven (7) day period.

After this second meeting, if the agency representative determines the contractor continues to be delinquent in subcontractor payments, he/she:

1. Shall order further payments to the contractor not be processed until payment is made to and verified with the subcontractor,
2. May order work under the contract be suspended based on the contractor's failure to meet contractual obligations under the contract,

3. May require the contractor to pay a penalty to the subcontractor, not to exceed \$ 100 per day, from the date that the payment was required, not to include any period that the agency representative determines that the subcontractor was not diligent in reporting non-payment to the procurement officer. The contractor or subcontractor may appeal the decision after the second meeting, noted above to the procurement officer. The contractor shall comply with the procurement officer's decision.

An act, failure to act or decision of the procurement officer or agency representative may not:

1. Affect the rights of the contracting parties under other provision of law, be used as evidence on the merits of a dispute between the agency and the contractor or the contractor and the subcontractor in any other proceeding or
2. Result in liability against or prejudice the rights of the agencies of the Maryland Department of Transportation.

A decision of a procurement officer or an agency representative designated by the procurement officer under this law is not subject to judicial review or the provision for bid protests and contract claims before the Board of Contract Appeals. This law shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any State procurement contract awarded before the effective date of this law, October 1, 1999.

**MINORITY
BUSINESS
ENTERPRISE
PROGRAM
HIGHLIGHTS**

Maryland Transportation Authority

Minority Business Enterprise Program Highlights

For purposes of MBE contract goal attainment and MBE Contract Compliance, the following information highlights the Maryland Department of Transportation (MDOT) Program Requirements:

1. Any participating MBE must be certified by MDOT to perform the item(s) of work /service selected for contract goal attainment.
2. Any participating MBE must serve a commercially useful function and may not act like a broker, unless it is certified as a broker (insurance or real estate). A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved and /or negotiates the cost of, arranges and accepts delivery of and pays for the materials or supplies required for the work of its contract. If, at any time before execution of the contract, the contractor determines that the designated MBE subcontractor has or will become unavailable, it immediately shall notify the Administration.
3. Any change in the approved MBE Plan must be approved in advance by the Administration and shall indicate the contractor's efforts to substitute another certified MBE subcontractor to perform the work.

4. Contract Goal Credits for Materials and Supplies.

- a. A bidder may count toward its MBE goal expenditures for materials and supplies obtained from certified business suppliers, provided that the certified businesses assume the actual and contractual responsibility for the provision of the materials and supplies. The bidder may count its entire expenditure to a certified business supplier that manufactures or produces goods from raw material or that substantially alters goods before resale. The bidder may count 60 percent of the expenditures to certified suppliers who are not manufactures towards its MBE goals. The MBE credited supplies may not exceed 60 percent of the credit given toward meeting the contract goal.
- b. Double Payee (Joint) checks to MBEs and suppliers for materials used by an MBE sub-contractor for its contracted work are allowable providing such a payment arrangement is offered to all subcontractor relationships and not restricted to just MBEs, and the MBE participates in scheduling the delivery of the materials and is fully responsible for ensuring that the materials meet specifications. However, when the contractor makes such payments, it is recommended that the payments be made by jointly endorsable checks signed by the contractor and MBE.
- c. For MBE firms that are not MBE regular dealers or manufacturers, a contractor may only count toward its MBE goal the fees charged for delivery of materials and supplies required on the job site (but not the cost of the materials and supplies themselves) when the trucking enterprise or delivery

service is not also the manufacturer of or regular dealer in the materials and supplies, provided that the fee is determined by the administration to be reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Third Tier Subcontracting. Third Tier Contracting is not the usual way for a prime contractor to achieve a MBE goal. However, there may be rare occasions when third tier contracting would be acceptable. Two conditions must be met before approval of a third tier contracting arrangement, which may be entered into to meet a MBE goal:
 - a. The Authority must be satisfied that there is no way except by third tier contracting that a DBE goal can be achieved;
 - b. The prime contractor must request of the Authority, in writing, prior to the awarding of a contract, that approval be granted for each third tier contract arrangement. The request must contain the specifics as to why a third tier contracting arrangement is being requested to meet the MBE goal.

6. Waivers:

The Administration will strictly adhere to the requirement for documentation of any waiver requests as provided in COMAR. Accordingly, if, for any reason, a contractor is unable to achieve the contract goal or sub-goal MBE participation, it may request, in writing, an exception (waiver) to the goal with justification to include the following:

- a. A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE (s);

b. A detailed statement of the efforts made to contract and negotiate with certified MBEs including:

- (i) The names, addresses, dates and telephone numbers of MBEs contacted; and
- (ii) A description of the information provided to MBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed;
- (iii) As to each certified MBE that placed a subcontract quotation or offer that your company considers not to be acceptable, a detailed statement of the reasons for this conclusion; and
- (iv) A list of certified MBEs found to be unavailable. This list should be accompanied by a MBE Unavailability Certification (Form D-EEO-005) signed by the MBE, or a detailed statement from the contractor concerning the MBE's refusal to give the certification.

A waiver of a contract goal may be granted only upon a reasonable demonstration by the bidder or offeror that certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the Administration determines that a waiver serves the public interest.

7. MBE Contract Compliance MonitoringMBE contract compliance monitoring commences upon official award of the contract has been made and continues throughout the life of the contract. An assigned contract compliance officer will advise the contractor and all approved participating MBE subcontractors, in writing, of compliance requirements, monitoring activities and will request necessary records

to establish MBE contractor compliance. If a contractor or any participating MBE subcontractor is found to be in non-compliance with the terms of MDOT's MBE Program or with the State's MBE Law, and fails or refuses to take the corrective action required, administrative sanctions may be imposed in order to promote the purpose of MDOT's MBE Program. These may be, suspension of work, withholding payment, referral of the matter to the Office of the Attorney General for action, or any other action that is authorized under the contract or by State or federal laws.

8. Fraud Provisions

Bidders are advised that Section 14-308 of the MBE Law provides that a person may be prosecuted for a felony for the following acts:

- a. Fraudulently obtaining, holding or attempting to obtain or hold MBE certification;
- b. Aiding another person in fraudulently obtaining, holding or attempting to obtain or hold MBE certification;
- c. Willfully obstructing, impeding, or attempting to obstruct or impede a State official or employee or employee investigating the qualifications of a business entity that has requested certification;
- d. Fraudulently obtaining, attempting to obtain, or aiding another person in fraudulently obtaining or attempting to obtain, public monies to which the person is not entitled; or
- e. In any minority business enterprise matter administered under subtitle 14:
 - (i) Willfully falsify, conceal, or cover up a material fact by any scheme or device;

- (ii) Make a false or fraudulent statement or representation; or
- (iii) Use a false writing or document that the person knows to contain a false statement or entry

Persons found guilty of violating these provisions are guilty of a felony and on conviction are subject to a fine not exceeding \$ 20,000 or imprisonment not exceeding five years, or both. Persons convicted under Section 14-308 may also be debarred from performing on State contracts by the Board of Public Works ("Board") for a period of time determined to be appropriate by the Board under the circumstances.

9. MBE Contract Support

Personnel of the Maryland Department of Transportation, its Administrations and the Authority offer contractor practicable support for MBE contract goal attainment. This assistance is available from Monday through Friday during normal business hours by calling 410-865-1269. Examples of MDOT Program assistance include:

To Majority Contractors

- Identifying subcontract items for goal attainment
- Answering questions related to MBE Program requirements

To Minority Contractors

- Answering questions related to MBE Program requirements
- Providing information on required contract records
- Referral to designated consultants for assistance for business related problems

**MINORITY
DISADVANTAGE
BUSINESS
ENTERPRISES**

MARYLAND DEPARTMENT OF TRANSPORTATION
POLICY STATEMENT – GOOD FAITH EFFORTS
April 22, 2004

MINORITY/DISADVANTAGED BUSINESS ENTERPRISES

It is the policy of the Maryland Department of Transportation (MDOT) that businesses owned by socially and economically disadvantaged person(s) shall have the maximum feasible opportunity to participate in the performance of contracts awarded by MDOT. The MDOT requires its contractors and subcontractors not to discriminate on the basis of race, color, religion, national origin, sex or disability in the award or performance of contracts. In support of this commitment, the MDOT has adopted the following Good Faith Efforts (GFE) Policy, which shall be applicable to all contracts awarded by the MDOT or its modal administrations.

In accordance with 49 CFR, Part 26, 53 and Md. Code Ann., State Fin. & Proc. Art., 14-302, the MDOT shall award a contract only to a bidder/offeror that makes GFE to meet the Minority Business Enterprise (MBE) or Disadvantaged Business Enterprise (DBE) contract goal. A determination that a bidder/offeror has made GFE shall only be made upon a determination by the MDOT that the bidder/offeror has shown that it:

- Has obtained enough MBE or DBE participation to meet the contract goal; or
- Has taken all necessary and reasonable steps to achieve the goal, which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE/DBE participation, even if they were ultimately unsuccessful.

The MDOT will make a fair and reasonable judgment whether a bidder/offeror who did not meet the goal made adequate GFEs. This policy expands the definition of GFE to allow greater flexibility to ensure DBE/MBE participation is obtained.

At a minimum, a statement of GFE submitted by the bidder/offeror shall include:

1. The name, address, and telephone number of all DBE/MBEs contacted, as well as the date of contact;
2. A description of the information provided to the contacted DBE/MBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed;
3. As appropriate, a detailed statement of the reasons why a DBE/MBE quotation was considered unacceptable; and
4. As appropriate, a list of DBE/MBE contractors found to be unavailable. For DBE/MBE contractors that are unavailable, the bidder/offeror shall provide a Minority Contractor Unavailability Certificate Form (Form D-005) signed by an

owner or officer of the DBE/MBE. If a DBE/MBE refuses to sign the unavailability certificate, the bidder/offeror shall submit a statement indicating as such.

To aid in the determination of whether the bidder/offeror has shown GFE, the MDOT may also look at the percentage of DBE/MBE participation obtained by other bidders/offerors on the procurement.

In addition to the requirements above, the following is a list of outreach efforts that MDOT will consider as part of the bidder/offeror's GFE to obtain DBE/MBE participation. Bidders/offerors shall be encouraged to offer innovative GFE initiatives to demonstrate GFE. MDOT administrations have the flexibility to approve such innovative initiatives. The following list is illustrative only and not intended to be exhaustive.

In a GFE determination, MDOT administrations may consider any information provided by a bidder/offeror concerning the following outreach efforts:

1. The bidder/offeror's efforts to solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of certified DBEs/MBEs that may have the capability to perform the work of the contract. The bidder/offeror should present evidence that it solicited this interest within adequate time to allow the DBEs/MBEs to respond to the solicitation. The bidder/offeror should also provide evidence that it took appropriate steps to follow up initial solicitations.
2. The bidder/offeror's selection of the work to be performed by DBEs/MBEs in order to increase the likelihood that the DBE/MBE contract goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE/MBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. The bidder/offeror's actions to provide interested DBEs/MBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. The bidder/offeror's negotiations with DBE/MBEs
 - a. Negotiating in good faith with interested DBEs/MBEs. It is the bidder/offeror's responsibility to make a portion of the work available to DBE/MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE/MBE subcontractors and suppliers. Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs/MBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and information as to why additional agreements could not be reached for DBEs/MBEs to perform the work.

- b. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE/MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs/MBEs is not in itself sufficient reason for a bidder/offeror's failure to meet the contract DBE/MBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder/offeror to perform the work of a contract with its own organization does not relieve that bidder/offeror of the responsibility to make GFE to meet the contract goal. This policy does not require a prime contractor to accept a higher quote from a DBE/MBE if the price is excessive or unreasonable.
5. The bidder/offeror must provide sound reasons for rejecting a DBE/MBE as unqualified. Any rejection of a DBE/MBE as unqualified shall be based on a thorough investigation of its capabilities. The DBE/MBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employees status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. The bidder/offeror's efforts to assist interested DBEs/MBEs in obtaining bonding, lines of credit, or insurance as required by the owner or contract.
7. The bidder/offeror's efforts, with prior written approval of the MDOT agency, to assist interested DBEs/MBEs to obtain necessary equipment, supplies, materials, or related assistance or services.
8. The bidder/offeror's effective use of the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE/MBE.
9. The bidder/offeror's efforts to identify and assist firms that are not certified but could possibly service on a contract and satisfy DBE/MBE goals if the firm were to be certified by the MDOT.
10. Evidence of the bidder/offeror's record of meeting or exceeding DBE/MBE participation goals on prior projects.

This policy applies to all MDOT contracts that contain a DBE/MBE participation goal. All MDOT personnel are responsible for implementing and adhering to this policy.

**GOOD FAITH
EFFORTS WAIVER
CHECKLIST**

PRIME CONTRACTORS' **GOOD FAITH EFFORTS/WAIVER CHECKLIST**

Prime Contractors who put Good Faith into action will:

- ✓ Use direct solicitation, minority/women community organizations, contractors' groups, and local, state, and federal minority/women-owned business assistance offices to reach MBE's;
- ✓ Identify and assist firms that may need bonding, lines of credits, insurance, equipment, and other related issues; or assist firms that are not certified but could possibly serve on a contract and satisfy DBE/MBE goals by becoming certified;
- ✓ Identify clear sub-contractible work that will enable MBE's to compete;
- ✓ Provide the MBEs with proper information regarding the job; to include plans, specifications, and anticipated time schedule for portions of the work to be performed;
- ✓ Coordinate pre-bid meetings to inform MBEs of contracting and subcontracting opportunities;
- ✓ Advertise in general circulation, trade associations, and minority focused media concerning the subcontracting opportunities;
- ✓ Provide written notice to all certified MBEs who are certified in the work areas and have capabilities of the contract for which their participation is solicited (Contractor must allow a minimum of 10 days for the MBEs to respond to the written solicitation.); and
- ✓ Follow up on initial solicitations of interest by contacting MBEs to determine if the MBEs are interested (Contractor must detail the efforts showing names, addresses, dates, and telephone numbers of the certified MBEs contacted along with a description of information provided.)

Prime Contractors who have done the above and are submitting a waiver will:

- ✓ Document everything listed above;
- ✓ As required by regulations provide a written request for a waiver;
- ✓ Provide detailed statements of efforts to achieve the goal; to include the name, address and telephone number of all DBE/MBEs contacted, as well as the date of contact;
- ✓ Provide a list of unavailable MBEs, including a Minority Contractor Unavailability Certification Form (Form D-005) signed by an owner or officer of each unavailable DBE/MBE (If the DBE/MBE refused to sign D-005, the contractor will should submit a statement regarding this refusal.);
- ✓ If the contractor deems a DBE/MBE to be unqualified and rejects the DBE/MBE, the contractor will provide written explanation of this decision (Contractor's reasoning must be based on a thorough investigation of MBE capabilities.);
- ✓ Provide evidence that the contractor tried to negotiate in good faith with interested MBEs;
- ✓ Demonstrate that certified MBE participation was unable to be obtained at a reasonable price or that public interest is best served by a waiver;
- ✓ Demonstrate a reasonable effort to meet the overall MBE goal with other MBE classifications if the request for a waiver is for a certain MBE classification within an overall MBE goal; and
- ✓ Provide evidence from prior projects showing that the contractor has previously successfully met or exceeded assigned MBE goals.

**ADDITIONAL
INFORMATION FOR
MBE
CONTRACTORS**

ADDITIONAL INFORMATION FOR MBE SUBCONTRACTORS

MBE REPORT OF PAYMENTS RECEIVED

By the 15th of each month the MBE should submit this document to the Authority's MBE Office. It should be submitted even if there are no payments for the month.

PROMPT PAYMENT TO SUBCONTRACTORS

It is the policy of the State that a contractor shall promptly pay a subcontractor any undisputed amount that a subcontractor is entitled to under the contract for construction. This payment shall be made within ten (10) days of receiving a progress payment or final payment from the State. Undisputed amounts include the retainage on a contract.

RECORDS RETENTION

Title 21 of the State Procurement Regulations, Subtitle 06 Contract Formation and Award, Chapter 5 Plant Inspection, Audit and Retention of Records, .03 Records Retention contains the following regulation: The contractor or subcontractor shall maintain books and records that relate to the cost or pricing data for 3 years from the date of final payment under the contract, unless a longer period is otherwise specified in the contract.

FRAUD PROVISIONS

Contractors are advised that State Finance and Procurement Article 14-308 covers prohibited acts and penalties for felony and misdemeanor offenses.

STATE OF MARYLAND GOVERNOR'S OFFICE OF MINORITY AFFAIRS (GOMA)

The state's principal advocates for minority businesses, we help minority business owners who are seeking state certification and state procurement opportunities. We also help minority business owners who believe they have been treated unfairly by a state agency or other entity.

We provide referrals to agencies and other entities that have programs to assist minority business owners in getting the services they need to start, develop and grow. For more information regarding GOMA log on to www.mdminoritybusiness.com, or by calling 410-767-8232.

ENTERPRENEUIAL DEVELOPMENT INSTITUTE (EDI)

EDI helps meet the education needs of small and minority businesses in construction and related business fields. The Maryland State Highway Administration's Equal Opportunity Office provides the services of the EDI. Centered at the University of Maryland Eastern Shore (UMES), EDI classes are held on weekends. A nominal fee of \$50.00 is charged for the classes and hotel accommodations. For schedule and registration information, contact the EDI Coordinator at (410) 651-6476.

MSBDFA BONDING AND CONTRACT FINANCING PROGRAM

The Maryland Small Business Development Financing Authority (MSBDFA) offers program through four programs: Contract Financing, Long Term Guaranty Program, Surety Bong Guaranty Program and Equity Participation Investment Program. They provide contract financing and surety bonding assistance to eligible firms to begin, continue and complete work on MDOT contracts. Firms bidding on MDOT contracts needing a bid, performance or payment bond or working capital can contact the office at (410) 333-4270.

PROFESSIONAL ASSISTANCE

An MBE firm certified by MDOT may request referral assistance in any area of business by calling the MBE Information Line, 1-800-544-6056 in the Office of Minority Business Enterprise.

THE STATE OF MARYLAND SMALL BUSINESS RESERVE PROGRAM

The State of Maryland Small Business Reserve Program is committed to the growth and success of small businesses. For the first time, small businesses will be able to bid for State contracts without competing with larger, more established companies.

Beginning October 1, 2004, designated agencies will be required to award a minimum of 10 percent of their units' total dollar value of goods, supplies, services, maintenance, construction, construction related, architectural service and engineering service contracts to small businesses. For more information regarding the Small Business Reserve Program log on to www.smallbusinessreserve.maryland.gov , or by calling 410-767-4270.

**MBE COMPLIANCE
CONTRACTOR
NOTIFICATION**

MBE COMPLIANCE CONTRACTOR NOTIFICATION

On MdTA Contracts, the prime/general contractor must notify the MBE compliance office of any changes to the approved MBE submittal package. This includes increasing the target MBE goal as well as decreasing the target goal. The notification must be in writing and include at a minimum the following information:

- A. Decrease of the target goal
 - a. MdTA contract number
 - b. Prime/General Contractor
 - c. MBE Contractor/Contractors affected
 - d. Contract Item Numbers
 - e. Actual dollar value of items
 - f. Percentage of decrease to target goal
 - g. Reason for decrease
 - h. List of other certified MBE Contractors who are contacted as replacements to attain target goal. This should include copies of correspondence from the prime/general contractor requesting quotes for the work and response from the MBE contacted.

- B. Increase of the target goal
 - a. MdTA contract number
 - b. Prime/General Contractor
 - c. MBE Contractor Name & Address
 - d. Contract Item Number
 - e. Actual dollar of value items
 - f. Percentage of increase above target goal

Correspondence concerning the above will be sent directly to:

Mrs. Meshelle M.V. Howard
Maryland Transportation Authority
Chief, MBE Program
2310 Broening Highway
Suite 150
Baltimore, MD 21224

The Office of Construction will receive a copy of the correspondence at the following address:

Mr. David Ferrara
Maryland Transportation Authority
Director of Construction
304 Authority Drive
Baltimore, MD 21222

**ALL OTHER QUESTIONS CONCERNING MBE COMPLIANCE CAN BE DIRECTED
TO THE FOLLOWING COMPLIANCE TEAM:**

**Valencia Hainesworth
Compliance Supervisor
410-537-5661**

**Karen Karris
Compliance Officer
410-537-5660**

**Orlando Price
Compliance Officer
410-537-1052**

POINTS OF CONTACT
Maryland Transportation Authority

All Shop Drawings:

Mr. Abey Tamrat
Maryland Transportation Authority
300 Authority Drive
Baltimore, MD 21222
atamrat@mdta.state.md.us

Phone: (410) 537-7822
Fax: (410) 537-7801

All Other Correspondence:

Mr. David Ferrara
Director of Construction
Maryland Transportation Authority
Engineering Division
304 Authority Drive
Baltimore, Maryland 21222
dferrara@mdta.state.md.us

Phone: (410) 537-7882
Fax: (410) 537-7802

Certified Payrolls:

Two (2) complete copies of certified payrolls are to be delivered to the MdTA Project Inspector at the field office for all contractors employed on the project. One (1) complete copy is to be sent to the Commissioner of Labor & Industry. **No certified payrolls are to be mailed or delivered to the FSK Bridge.**

Documents Required Before Commencing Work

- Three (3) emergency phone numbers.
- All subcontractors must be approved by the Engineering Division. Contractor must provide name of subcontractor, address, dollar value of subcontract, item number and description of work.
- MBE subcontractors must be approved by the Chief, Equal Opportunity, and by the Engineering Division.
- All certificates of insurance for the minimum amounts as required by the Special Provisions.
- Submit payment breakdown for all lump sum items.
- Progress Schedule.
- MOT Plans.
- Catalog Cuts for all M.O.T. devices both permanent and temporary.